

**70A-2-316 Exclusion or modification of warranties -- Livestock.**

- (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 70A-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.
- (2) Subject to Subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."
- (3) Notwithstanding Subsection (2)
  - (a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and
  - (b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
  - (c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.
- (4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 70A-2-718 and 70A-2-719).
- (5) If a contract for the sale of livestock, which may include cattle, hogs, sheep, and horses, does not contain a written statement as to warranty of merchantability or fitness for a particular purpose, there shall be no implied warranty that the livestock are free from disease and sickness at the time of the sale and the seller shall not be liable for damages arising from the lack of merchantability or fitness for a particular purpose.

Amended by Chapter 276, 1981 General Session